



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/173815

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on May 17, 2016, at Milwaukee, Wisconsin.

The issues for determination are 1) whether the Petitioner may seek further administrative review of a 10 year disqualification from the FoodShare program; 2) whether Petitioner's appeal is timely and if so, 3) whether the Public Assistance Collections Unit (PACU) correctly determined the Petitioner was overpaid \$600 in FoodShare benefits for the period of February 1, 2013 to April 30, 2013 and 4) whether PACU correctly implemented a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], PARIS Interstate Agent
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On January 23, 2013, the Petitioner called the agency to complete an application for benefits in which he indicated that he was homeless, but had a mailing address on [REDACTED]. Petitioner reported having no income. (Exhibits 1 and 16)
3. On May 17, 2013, the Public Assistance Collections Unit (PACU) sent the Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], alleging an overpayment of \$600 for the period of February 1, 2013 to April 30, 2013. The notice was mailed to the address on [REDACTED]. (Exhibits 3 and 4)
4. On June 4, 2013, PACU sent the Petitioner a repayment agreement. This was sent to the address on [REDACTED]. (Exhibit 5)
5. On July 2, 2013, August 2, 2013, and September 4, 2013, PACU sent the Petitioner dunning notices to remind him about the debt. All three notices were sent to the address on [REDACTED]. (Exhibits 6, 7, and 8)
6. On October 11, 2013, PACU sent the Petitioner a notice advising him that his state tax refunds would be intercepted to satisfy the debt. This notice was sent to the Petitioner at the [REDACTED] address. (Exhibit 19)
7. None of the foregoing notices were returned to the agency. (Testimony of [REDACTED] PARIS Interstate Agent).
8. On September 12, 2014, the Office of Inspector General (OIG) mailed an Administrative Disqualification Hearing (ADH) notice to the Petitioner at the [REDACTED] address. It was returned to the agency on September 18, 2014. (Exhibit 11; Testimony of [REDACTED])
9. On September 22, 2014, OIG sent another ADH notice to the Petitioner at an address on [REDACTED] [REDACTED], for a hearing scheduled on October 14, 2014, less than 30-days out. (Exhibit 13)
10. An ADH took place, as scheduled on October 14, 2014. The Petitioner did not appear for the hearing. (Exhibit 14)
11. On October 24, 2014, the Division of Hearings and Appeals issued a decision finding that the Petitioner lied about his residence in order to receive food stamp/FoodShare benefits in two, different states. The decision upheld a ten year disqualification from the food stamp program. The decision was mailed to the [REDACTED] address, even though it was no longer valid. (Exhibit 14)
12. Also on October 24, 2014, OIG sent the Petitioner a FoodShare Notice of Disqualification, advising him of the ten year disqualification. This notice was sent to the [REDACTED] address. (Exhibit 15)
13. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 22, 2016. (Exhibit 20)

DISCUSSION

Looking at the hearing request that the Petitioner filed, it appears that he is appealing two things: 1) his disqualification from the FoodShare program and 2) an overpayment determination. The Division of Hearings and Appeals opened a file for a tax intercept appeal, as that was the last action taken by PACU to recover the overpayment.

The 10-Year Disqualification from the FoodShare / Food Stamp Program

With regard to the disqualification determination, there was already an Administrative Disqualification Hearing on October 14, 2014, to determine whether OIG correctly sought to impose upon the Petitioner a 10-year disqualification from the food stamp program. A decision was rendered in that case to uphold the 10-year disqualification. As such, I do not have the authority to review that determination.

Federal regulations prohibit continued administrative appeals, or reversals of a disqualification by a subsequent fair hearing. See, 7 C.F.R. § 273.16(e)(8)(ii). Rather, an appeal for judicial review must be filed in a court of competent jurisdiction in the county where Petitioner lives. Page 4 of Exhibit 14 explains the procedures necessary to appeal to a circuit court. If the Petitioner would like free or low cost legal assistance with this matter, he can contact Legal Action of Wisconsin at (414) 278-7722.

The Underlying Overpayment

An appeal of an adverse determination by the agency must be filed within 90 days of the date of action. 7 CFR 273.15(g); *FoodShare Wisconsin Handbook (FSH)* §6.4.1.1 The decision to recover an overpayment of benefits is one type of adverse determination.

The agency sent the overpayment notice on May 17, 2013. This would generally set the 90-day appeal deadline at August 15, 2013. Petitioner did not file an appeal until April 22, 2016, well past the 90-day deadline.

The Petitioner argues that his appeal of the overpayment should be found to be timely, because he moved out of state in 2012 and did not receive the May 2013 overpayment notice.

Wis. Stats. §891.46 creates a presumption that service has occurred upon mailing, stating that, “summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage.” Further, “the mailing of a letter creates a presumption that the letter was delivered and received.” State ex. rel Flores, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. Id at 613.

This is a close case. The May 2013 notice was sent to the Petitioner at a mailing address on [REDACTED] that he reported in a January 2013 application for benefits. However, the overpayment determination appears to be based upon the assertion that the Petitioner was not eligible for Wisconsin benefits between February 1, 2013 and April 30, 2013, because of his, “failure to report residence change”, which must refer to a move out of the State of Wisconsin, since that is the only type of change in residence that is in question, that would have rendered the Petitioner ineligible for Wisconsin benefits.

The decision issued by the Division of Hearings and Appeals has already found that the Petitioner was probably living in Minnesota, because he was receiving health care benefits / services in Minnesota between October 1, 2012 and April 30, 2013, and that same decision determined that the Petitioner lied in the January 2013 application. (Exhibit 14) I note that the case comments indicate that agency workers in Wisconsin were in contact with Minnesota authorities, and so, could have easily ascertained an address for the Petitioner in Minnesota. (See Exhibit 16)

Based upon the foregoing, it is found that there is sufficient evidence to rebut the presumption that the Petitioner received the overpayment notice, since it was sent to the Petitioner at the [REDACTED] address in Wisconsin, when he was no longer in Wisconsin, and at a time after PACU had already determined the

Petitioner was no longer in Wisconsin. Accordingly, it is found that Petitioner's appeal of the underlying overpayment determination is timely.

The Petitioner testified that he moved to Minnesota in 2012 and did not return to Wisconsin until sometime "later" in 2013. As discussed above, the decision issued by the Division of Hearings and Appeals found that the Petitioner was probably living in Minnesota between October 1, 2012 and April 30, 2013. Looking at the case comments in Exhibit 16, it does not appear the Petitioner had any contact with the agency until June 2015, when he submitted an application for healthcare benefits, and so did not report the change in address, as alleged.

Pursuant to 7 C.F.R. §273.3, "a household shall live in the State in which it files an application for participation" in the food stamp program. Because Petitioner was living in Minnesota, he was not eligible for the benefits he received in Wisconsin for the months of February, March, and April 2013.

The case comments in Exhibit 16 indicate that the Petitioner previously received \$200 per month in benefits and when the Petitioner completed his phone renewal on January 23, 2013, he reported having no income, so his case was confirmed. As such, it is more likely than not, that he continued to receive \$200 per month in benefits. Accordingly, it is found that PACU correctly determined that the Petitioner was overpaid \$600 in benefits from February 1, 2013 through April 2013.

The Tax Intercept

The remaining issue is whether PACU correctly implemented the tax intercept to recover the overpayment.

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 The tax intercept notice was sent to the Petitioner at the [REDACTED] address in October 2013. The [REDACTED] was not an accurate address and PACU knew this, because it had determined that he moved out of state and was not eligible for Wisconsin benefits. As such, it is found that the Petitioner was not given proper notice of the tax intercept.

Because the Petitioner was not given proper notice of the tax intercept, PACU cannot use a tax intercept to recover the \$600 overpayment, at this time. However, there is nothing prohibiting PACU from immediately sending another tax intercept notice to the Petitioner at the address he provided at the hearing, which is the address indicated above, under "Parties in Interest."

CONCLUSIONS OF LAW

1. There is no further administrative review allowed after a decision is issued in an Administrative Disqualification Hearing.
2. Petitioner's appeal of the underlying overpayment is timely.
3. PACU correctly determined that the Petitioner was overpaid \$600 in FoodShare benefits for the period of February 2013 through April 2013.
4. Petitioner's appeal of the tax intercept was timely filed; PACU did not correctly implement a tax intercept in October 2013.

THEREFORE, it is

ORDERED

That PACU rescind the October 2013 Tax Intercept notice within 10-days of this decision. In all other respects this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

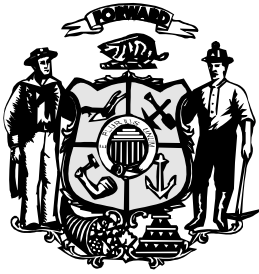
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of June, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 15, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit